



14 AUG 2007

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In re Application of
HARBORTH et al.
U.S. Application No. 10/551,332
PCT No.: PCT/DE04/00430
Int. Filing Date: 05 March 2004
Priority Date: 31 March 2003
Attorney Docket No.: 03100257AA
For: BIOFILTER SYSTEM AND METHOD
FOR PURIFYING GASES ESCAPING
FROM A GULLY HOLE

DECISION ON REQUEST

This decision is issued in response to applicants' "Response to Decision on Request and Request for Revised Official Filing Receipt" filed 03 April 2007, which is being treated as a Renewed Request under 37 CFR 1.497(d).

BACKGROUND

On 05 March 2004, applicants filed international application no. PCT/DE04/00430 which claimed a priority date of 31 March 2003. The international application named Helmut Hanert and Matthais Nieber as an applicant/inventor. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 31 September 2005.

On 29 September 2005, applicants filed a transmittal letter for entry into the national stage accompanied by, *inter alia*, the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 03 November 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 21 January 2007, applicants filed a request under 37 CFR 1.497(d) which included: a declaration executed by: Peter Harborth; Helmut Hanert and Matthais Nieber; a Statement of Lack of Deceptive Intent by Omitted Inventor for Correcting Inventorship under 37 CFR 1.48(a); Written Consent of Originally-Named Inventor to Correct Inventorship under 37 CFR 1.48 executed by Matthias Nieber and Helmut Hanert. In a

decision dated 12 February 2007, applicant request under 37 CFR 1.497(d) was dismissed without prejudice.

On 03 April 2007, applicant filed "Response to Decision on Request on Request for Revised Official Filing Receipt" which is being treated as a renewed request under 37 CFR 1.497(d).

DISCUSSION

As defined in 37 CFR 1.9(a)(3), a U.S. national stage application must first comply with the requirements of 35 U.S.C. 371(c) to constitute a "nonprovisional" application, therefore, applicants' request will be treated under 37 CFR 1.497(d). The present submission seeks to correct the inventorship so as to add inventor Peter Harborth to the application. Where, as here, the inventorship in the national stage declaration is not consistent with the inventorship in the international application, applicants must correct the inventorship pursuant to 37 CFR 1.497(d), which states the following:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in § 1.17; and

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignees (see § 3.73(b) of this chapter).

(4) any new oath or declaration required by paragraph (f) of this subsection.

Applicants have satisfied items (1); (2); (3) and (4).

CONCLUSION

The renewed request under 37 CFR 1.497(d) is **GRANTED**.

A review of the application papers reveals that applicants have completed all the requirements of 35 U.S.C. 371 for entry into the national stage.

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This application will be given an international application filing date of 05 March 2004 and a date of 21 January 2007 under 35 U.S.C. 371.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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